

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAN WISKIND,
Plaintiff,

v.

JPMORGAN CHASE BANK, N.A.,
Defendant.

Case No. [14-cv-04223-NC](#)

**ORDER GRANTING MOTION TO
DISMISS**

Re: Dkt. No. 25

Before the Court is defendant JPMorgan's motion to dismiss plaintiff Dan Wiskind's amended complaint. Because Wiskind's complaint fails to comply with Rules 8 and 9 of the Federal Rules of Civil Procedure, the Court grants JPMorgan's motion to dismiss.

I. BACKGROUND

Plaintiff Dan Wiskind purchased a property located in Kelseyville, California, and obtained a mortgage for \$357,565 from JPMorgan's predecessor in interest, Washington Mutual Bank. Dkt. No. 23 at ¶ 19. The Court will address additional facts as necessary in the remainder of this order.

This Court has jurisdiction under 28 U.S.C. § 636(c), as all parties have consented to proceeding before a magistrate judge. Dkt. Nos. 15, 33.

II. ANALYSIS

A. Legal Standard

A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the legal sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). On a motion to dismiss, all allegations of material fact are taken as true and construed in the

light most favorable to the non-movant. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). The Court, however, need not accept as true “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *In re Gilead Scis. Secs. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008). Although a complaint need not allege detailed factual allegations, it must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible when it “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

If a court grants a motion to dismiss, leave to amend should be granted unless the pleading could not possibly be cured by the allegation of other facts. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

B. Motion to Dismiss

A Court may dismiss a complaint that fails to comply with Rule 8 of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 41(b). Under Rule 8, a pleading stating a claim for relief must include “a short and plain statement of the claim showing the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). The purpose of the complaint is to give the defendant fair notice of the claims against him and the grounds upon which the complaint stands. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). A complaint must state the elements of the plaintiff’s claim in a plain and succinct manner. *Jones v. Cmty. Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir. 1984). And while “Rule 8 does not require detailed factual allegations,” it “demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678 (internal quotation marks and citations omitted).

This rule requires that each allegation be “simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1). Thus, where a complaint’s allegations are “argumentative, prolix, replete with redundancy and largely irrelevant,” a court may dismiss the complaint for failure to comply with Rule 8. *McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th Cir. 1996); *see also*

1 *Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671, 673-74 (9th Cir. 1981) (affirming
2 dismissal of complaint that was “‘verbose, confusing and almost entirely conclusory’”).
3 “Something labeled a complaint but . . . prolix in evidentiary detail, yet without simplicity,
4 conciseness and clarity as to whom plaintiffs are suing for what wrongs, fails to perform
5 the essential functions of a complaint,” and “impose[s] unfair burdens on litigants and
6 judges.” *McHenry*, 84 F.3d at 1179-80.

7 Significantly, the “propriety of dismissal for failure to comply with Rule 8 does not
8 depend on whether the complaint is wholly without merit.” *Id.* at 1179. Accordingly,
9 “even if the factual elements of the cause of action are present, but are scattered throughout
10 the complaint and are not organized into a ‘short and plain statement of the claim,’
11 dismissal for failure to satisfy Rule 8 is proper.” *Lyshorn v. J.P.Morgan Chase Bank*,
12 *N.A.*, No. 12-cv-05490 JSW, 2013 U.S. Dist. LEXIS 29099, at *5 (N.D. Cal. Mar. 4, 2013)
13 (quoting *McHenry*, 84 F.3d at 1178).

14 Here, Wiskind’s complaint fails to comply with Rule 8. The complaint is
15 unreasonably lengthy and infused with extraneous statements. For instance, the complaint
16 includes irrelevant allegations concerning the banking industry generally, and the impact
17 the foreclosure crisis had on the U.S. economy. *See, e.g.*, Dkt. No. 23 at ¶¶10-18 (citing
18 and quoting *New York Times* and *Los Angeles Times* articles discussing the unemployment
19 rate and Attorney General Kamala Harris’ Mortgage Fraud Strike Force). As another
20 example, early on in the complaint, Wiskind states “there is a unity between and among all
21 Defendants, and each acts as the alter ego of the other.” *Id.* at ¶ 6. Yet it is unclear which
22 defendants Wiskind is referring to and what role an alter ego theory plays in this lawsuit, if
23 any. At one point, Wiskind also discusses the “policy considerations” underscoring the
24 country’s “desperate need” for the “creation and imposition of strict ‘financial product’
25 liability against Defendants,” and declares that the “Defendants and other Big Banks over
26 the last third of a century have destroyed the U.S. economy and countless American lives.”
27 *Id.* at ¶ 101. While such vitriol and policy proposals may be appropriate in the op-ed pages
28 of the newspapers Wiskind cites to, they add nothing to a complaint before this Court.

1 Additionally, Wiskind’s legal theories are unclear, and lack sufficient factual
2 allegations. For instance, Wiskind alleges that JPMorgan engaged in “predatory lending
3 practices” when it “ignored traditional lending guidelines in providing Plaintiff’s loan,
4 despite full knowledge that housing prices were inflated above real value and Defendants
5 intended to sell-off loans that had been made to borrowers with substandard credit by
6 bundling the substandard loans with creditworthy borrower loans so the entire bundle
7 could be characterized as ‘high-quality’ (prime) home mortgages.” *Id.* at ¶ 91. Wiskind
8 does not offer sufficient factual matter to support this allegation and fails to identify the
9 statute or common law doctrine that could serve as the basis for relief.

10 To the extent Wiskind seeks to hold JPMorgan liable for fraud, Wiskind fails to
11 plead fraud with particularity under Rule 9(b).

12 To plead fraud or mistake under Rule 9(b), “a party must state with particularity the
13 circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b). “The plaintiff must set
14 forth what is false or misleading about a statement, and why it is false.” *Vess v. Ciba-*
15 *Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (quoting *In re GlenFed, Inc. Secs.*
16 *Litig.*, 42 F.3d 1541, 1548 (9th Cir. 1994)); see *Moore v. Kayport Package Express, Inc.*,
17 885 F.2d 531, 540 (9th Cir. 1989) (holding that “[m]ere conclusory allegations of fraud are
18 insufficient.”). “The complaint must specify such facts as the times, dates, places, benefits
19 received, and other details of the alleged fraudulent activity.” *Neubronner v. Milken*, 6
20 F.3d 666, 672 (9th Cir. 1993) (citations omitted).

21 Put differently, “a pleading must identify the who, what, when, where, and how of
22 the misconduct charged, as well as what is false or misleading about [the purportedly
23 fraudulent] statement, and why it is false.” *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys.,*
24 *Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011) (citation and internal quotation marks omitted,
25 brackets in original).

26 Here, Wiskind’s claims fail to identify the “who, what, when, where, and how” of
27 the false or misleading statements he alleges JPMorgan made. For instance, in describing
28 the second cause of action for “Deceit-Intentional Misrepresentation,” Wiskind states that

“Defendants have suppressed information regarding the terms of the loan, in violation of state regulations.” *Id.* at ¶ 134. The complaint continues, “When Defendants Chase and their agents, employees, or representatives and predecessors in interest made these representations, they knew them to be false.” *Id.* at ¶ 135. Wiskind fails to identify—simply and concisely—what information was suppressed, what representations were made, and what state regulations were violated. To the extent he alleges that JPMorgan misled him, Wiskind must provide more context, such as who communicated the fraudulent statement (e.g., a banker, a customer service representative), when, and what the statement consisted of.

III. CONCLUSION

For the foregoing reasons, the court GRANTS JPMorgan’s motion to dismiss Wiskind’s complaint for failure to comply with Rule 8. While the Court will provide Wiskind leave to amend, the Court cautions Wiskind that any amended complaint must comply with this order—it must clearly and simply allege the facts in support of Wiskind’s claims. To the extent Wiskind premises his allegations on purported fraud or misrepresentations, Wiskind must provide context, and clearly allege what statements were made to him by whom and when.

Wiskind must file an amended complaint within 14 days. If Wiskind fails to file an amended complaint by February 12, 2015, or if he files an amended complaint that fails to comply with Rule 8, and with Rule 9 to the extent his complaint is premised on fraud, this action will be dismissed with prejudice under Rule 41(b).

Finally, the Court denies JPMorgan’s request for judicial notice; the Court did not rely on any of the documents in JPMorgan’s request.

IT IS SO ORDERED.

Dated: January 29, 2015



NATHANAEL M. COUSINS
United States Magistrate Judge